

## **LEGAL IMPLICATIONS OF THE STATE LANDFILL CAPPING GRANT**

The Town used a State Grant to cover part of the 1988 landfill capping costs. The State Grant stipulated the following Project Eligibility Precondition and Deed Restriction:

- “The applicant will agree, as a precondition to receiving a Landfill Capping Grant, that it will restrict future use of the landfill site to passive or active recreation that will not threaten the public health, the environment, or the integrity of the closure methods employed”, with “a restrictive covenant be imposed on the land on which the landfill to be closed ... limiting future use ... to active or passive recreation”.
- The State Grant also required the Town to perform the closure in accordance with the DEP Closure Permit.

The Town agreed to both of the above listed preconditions in the final 1989 Grant Agreement. The 2004 letter from the Town's Superintendent of DPW, Guilford Mooring, reported compliance with the capping requirements, but noted that the first requirement was still not resolved and the Town is “interested in resolving this issue”.

Both of the above listed State Grant requirements are not fulfilled:

- The use of the landfill for a planned industrial solar array installation will be a violation of the State Grant's recreational use requirement.
- According to the DEP documents, the landfill was not capped in accordance with the DEP Closing Permit.

Prior to buying property next to the landfill, numerous residents were assured by Town officials that the site would be used **only** for recreational purposes as outlined in the State Grant.

Homes would not have been built on this location and children raised in such close proximity to a landfill without reassurances from the town that it was safe and would not be developed for anything other than recreation.

Recently, Mr. Mooring and local newspapers ridiculed the abutter's claims that any such assurances were given. At a meeting with the group in April, Mr. Mooring said that there were no restrictions on the use of the site.

If the Town signs a 30-year Power Purchase Agreement that stipulates that an industrial solar generation facility will be placed on a large area of the old landfill, it will be a violation of the State Capping Grant contract the Town signed in 1989.

**See slides attached on the pages below.**

**STATE CAPPING GRANT:  
LANDFILL IS RESERVED TO RECREATIONAL USE**

- **Deed Restriction of the STATE CAPPING GRANT AGREEMENT signed by the Town:**

**“The applicant will agree, as a precondition to receiving a Landfill Capping Grant, that it will restrict future use of the landfill site to passive or active recreation that will not threaten the public health, the environment, or the integrity of the closure methods employed.”**

- **2004 Letter to DEP by Mr. Mooring:**

**“the deed restriction for the property has not been filed” but “we are interested in resolving this issue.”**

- **The use of the landfill for a planned industrial solar array installation will be a violation of the recreational use clause of the State Capping Grant.**

## **LANDFILL WAS NOT PROPERLY CAPPED IN ACCORDANCE WITH THE STATE CAPPING GRANT**

- **Closure Requirements of the STATE CAPPING GRANT:**

**Maximum permeability must remain at  $1 \times 10^{-6}$  cm/sec**

- **Actually Implemented Value Exceeds Closure Permit by 10 times**

**From the Project Manual for the Contractor Performing the Closure:**

**“insure a permeability coefficient of less than or equal to  $1 \times 10^{-5}$  cm/sec”**

- **2007 DEP Test Data: Exceeding the Closure Permit by 150 times:**

**“hydraulic connectivity of the six impermeable soil samples... averaging  $1.5 \times 10^{-4}$  cm/sec”**

- **2010 DEP Test Data:**

**Leachate leaking at the rate of 940 gallons/acre/day**